

MISC.CIVIL APPLICATION NO. 1451 OF 1993.

Date of decision: 8.1.1996.

For approval and signature

The Honourable Mr. Justice S. M. Soni

and

The Honourable Mr. Justice R. R. Jain

Mr. M.J. Thakore, advocate for petitioners.

Mr. Y.S. Lakhani, advocate for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.M. Soni & R.R. Jain, JJ.

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January 8, 1996.

Oral judgment (Per Soni, J.)

Learned advocates for the parties are absent.

Petitioners have moved this court for taking necessary action under the Contempt of Courts Act against the respondents alleging that the respondents have committed breach of the order passed by this court in Misc. Civil Application No.571 of 1991. In the said application, petitioners have given an undertaking to the following

effect:

"Mr. Amin, learned advocate for respondents No.5 and 6, states that at present the application under Order 39, Rule 2A of the Civil Procedure Code is pending before the Civil Judge (S.D.) Ahmedabad (Rural). He further states that till the Trial Court decides the application under Order 39 Rule 2A of the Civil Procedure Code and till the Trial Court modifies its status quo order, respondents Nos.5 and 6 will not make any further construction on the disputed land. The learned advocates for respondents Nos.1, 5 and 6 further states that respondents Nos.1, 5 and 6 will not transfer or alienate the disputed property till the application under Order 39 Rule 2A of the CPC and the application for interim injunction are decided by the Trial Court."

Alleging non-compliance and breach of the said undertaking, present application is filed contending that the construction is further continued and the property is transferred.

On service of Rule, respondents have filed affidavit in reply wherein following averments are made:

"Still however, I say that the allegations about making any construction whatsoever as alleged are not correct and are positively denied. I further deny about the property in question having been transferred to any other party either by me or by any of the opponents as alleged."

The facts of carrying out further construction and transfer are denied. To support the allegation of further construction, the petitioners have produced some photographs. Those photographs show and suggest that finishing work is carried out on the existing construction and no new construction is carried out. Therefore, in our opinion, if finishing work is carried out on the existing construction, it cannot be said to be a new construction. The petitioners have not specifically stated or averred as to what new construction is carried out. In view of this fact, simply carrying out finishing work does not amount to new construction.

It is the case of the petitioners that the property is transferred. In the application, it is not shown as to whom, when and for what consideration it is transferred. Admittedly, the property is an immovable one, having value of more than Rs.100/- If any transfer of such a

property takes place, same requires registration. If there is a transfer of said property, there is bound to be a documentary proof for the same. No such proof is produced before the court except bare averment of transfer. Apart from this, the said fact is denied by the respondents. The averment being vague and not supported by any documentary evidence, in our opinion, cannot be acted upon.

Thus, breach of undertaking is not established by the petitioners. Hence, it cannot be said that any breach is committed by the respondents. Therefore, the petition is liable to be dismissed.

After the above order is passed, learned advocate for the petitioners states that he does not press this application. Hence, this application stands disposed of as not pressed. Rule discharged. No costs.